REMARKS / ARGUMENTS

Claims 1-31 are pending in the instant application. Claims 1, 11 and 21 are independent claims. Claims 2-10 12-20 and 22-31 depend from independent claims 1, 11 and 21, respectively. Claims 1, 11, and 21 have been amended. The Applicant respectfully requests reconsideration of claims 1-31 in light of the above amendments and the following remarks.

I. PREMATURE NOTICE OF ABANDONMENT

Subsequent to the 11/30/2010 BPAI Decision, the Examiner mailed a Notice of Abandonment on 12/10/2010. However, the BPAI Decision allows for an RCE to be filed on, or before, the two-month reply period of 1/31/2011. The undersigned attorney for Applicant conducted a phone interview with Examiner Tri H. Phan on 12/20/2010, pointing out that the 12/10/2010 Notice of Abandonment is premature. The Examiner agreed and informed the undersigned attorney that the premature notice will be withdrawn. Subsequently, on 1/4/2011, Supervisory Patent Examiner Chi Pham also informed the undersigned attorney that a sua sponte decision to withdraw the 12/10/2010 Notice of Abandonment was issued on 1/3/2011.

The Applicant points out that, as of 1/31/2011, the USPTO's Private PAIR system does not reflect that any sua sponte withdrawal of abandonment has been issued.

However, the Applicant is hereby filing a Request for Continued Examination within the statutory deadline from issuance of the BPAI Decision and, therefore, requests consideration of the claim amendments and arguments appearing in this paper.

II. CLAIM REJECTIONS UNDER 35 U.S.C. § 102

With regard to the anticipation rejections under 35 U.S.C. § 102, MPEP 2131 states that "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California,* 814 F.2d 628, 631 2 USPQ2d 1051, 1053 (Fed.Cir. 1987). MPEP 2131 also states that "[t]he identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

A. Rejection of Claims 1-7, 10-17, 20-27 and 30-31 under 35 U.S.C. § 102(a) as Anticipated by Radford

The claims 1-7, 10-17, 20-27, and 30-31 have been rejected under 35 U.S.C. 102(a) as being anticipated by Radford. For example, the Final Office Action cites various portions of Radford that purports to show that claims 1, 11, and 21 are anticipated. However, when the claims are viewed in their entirety, it is clear that Radford does not anticipate claims 1, 11, and 21. For example, the Final Office Action states that "causing a display of a plurality of quality of service options corresponding to

said at least one media file for selection by a remote user" is taught by Radford on page 1, para [0008]; page 2, para [00019]; and page 4, para [0029-0031]. But when each of the claims 1, 11, and 21 are read in context of the entire respective claim, it is readily seen that the claims teach the following:

> receiving an input specifying at least one media file for transfer via a communication channel in the communication network;
>
> **subsequent to said receiving,** causing:
> a display of a plurality of quality of service options corresponding to said at least one media file for selection by a remote user; and
> receiving a quality of service selection specifying at least one of said plurality of quality of service options; and
>
> **subsequent to said receiving of said quality of service selection**, transferring said at least one media file via said communication channel utilizing said quality of service selection. (emphasis added)

That is, "causing: a display of a plurality of quality of service options corresponding to said at least one media file for selection by a remote user" occurs **after** the media file is specified but **before** the specified media file is transferred.

Radford does not teach this limitation. Paragraph 8 of Radford states:

> [0008] In one aspect, the invention provides a method for the delivery of streamed data content from a server to a client device over a communications network. According to the method, streamed data content is requested from a listing server and an initial streamed data content file is delivered to the client device from one or more hosting servers. The hosting serves have a plurality of streamed data content files stored therein. The plurality of content files can be stored independently or the plurality of content files stored on the hosting server can be stored as a single file and converted to the appropriate

> quality level in response to said requesting. The initial streamed data content file is displayed to the client device. **According to the method, a user interface program is implemented and a user interface is displayed on the client device. The program allows the user of the client device to adjust the quality level of the streamed content being displayed**. The quality level can be changed over a wide range of quality levels, including data transfer or bit rates, formats (e.g., audio vs. slideshow vs. video), and image sizes. The user interface program can be stored on the host device or can be downloaded to the client device from a server.

Accordingly, it can be seen that paragraph 8 does not teach "causing: a display of a plurality of quality of service options corresponding to said at least one media file for selection by a remote user" after specifying a media file for transfer, but before the media file is transferred. Instead, Radford teaches a program that allows "the user of the client device to adjust the quality level of the streamed content being displayed." That is, **Radford teaches transferring a requested media file without displaying a quality of service options.** *See* Radford at p. 2, paragraph 18. It is only after the media file is being transferred that the user can change quality levels of the media file being displayed. In other words, Radford allows quality levels to be adjusted at the client device while the media file is being displayed on the client device (i.e., only after the file is transferred). Accordingly, Radford does not disclose "causing a display of a plurality of quality of service options corresponding to said at least one media file for selection by a remote user" after specifying a media file for transfer, but before the media file is transferred.

Neither does paragraph 19 of Radford teach "causing a display of a plurality of quality of service options corresponding to said at least one media file for selection by a remote user" after specifying a media file for transfer, but before the media file is transferred. For example, paragraph 19 states:

> [0019] The initial quality level of the streamed data provided to the user can be fixed by the content provider, can be selected by the user from a number of options, or can be determined automatically. In one embodiment, the initial quality level is determined by a user's preset data transfer preference, that can be, for example, set by the user. In another embodiment, the connection speed of the client is determined by a computer program running on either the client device or on the listing or hosting server. In a preferred embodiment, the client's connection speed to the network (x) is determined 120 by a computer program running on either the client or on the listing server.

Accordingly, it can be seen that paragraph 19 teaches setting default quality level by a user before any specifying of any media file by the user. Therefore, the Applicant submits that paragraph 19 does not teach "causing: a display of a plurality of quality of service options corresponding to said at least one media file for selection by a remote user" after specifying a media file for transfer, but before the media file is transferred.

Additionally, paragraphs 29-31 of Radford also do not teach "causing: a display of a plurality of quality of service options corresponding to said at least one media file for selection by a remote user" after specifying a media file for transfer, but before the media file is transferred. For example, paragraphs 29-31 state:

[0029] Initial content is then delivered to the client device and displayed to the user. A user interface also is provided. The user interface is displayed to the user along with the content being displayed. The user interface can be implemented on the client device or can be implemented on a server and displayed to the client device. The user interface allows a user to dynamically change the quality level of streamed data received during display of the streamed data. For example, if the network or ISP becomes congested and the quality of the streamed data deteriorates or is marred by interruptions (typically such interruptions are required to cache the streaming data), a user might wish to switch to a lower quality level (i.e., one requiring less bandwidth). The interface can be any suitable interface, including voice activated, graphical, text-based, or any other suitable interface for providing input to a client device. The user can interact with the interface with any suitable input device including, for example, a microphone, a mouse, a trackball, a keyboard or other keypad device, a touch screen, a tablet, an eye-tracking device and any other suitable device known to one of skill in the art. When the user interface is graphical, the interface can be integrated within a browser window, can appear in a separate window, can appear in a pull-down menu, a toolbar, and the like. The user interface can user any means of interacting, including for example, dials, knobs, slide, buttons, text links, and the like.

[0030] An example of a suitable graphical user interface, the Video Quality Management System (VQMS), is shown schematically in FIG. 2. A window 200 is displayed on the client device. The window includes a display area 210. The interface also includes a quality control region 220, having buttons for selecting an appropriate quality level 230-250, and image size buttons 260 for adjusting the size of the video display area. The VQMS interface also has a streaming video control region 270 having various video controls including buttons for play 310, pause 300, stop 290 and for help 280.

[0031] The user interface allows a user to adjust the quality level of the streamed data being provided from the hosting server or servers. The interface can indicate only the quality levels available (corresponding to files located on the hosting server or servers) or can

> provide a simple increase/decrease quality functionality. When the streamed data is video data, the interface also can allow the user to specifically adjust the quality level by choosing to change the image size, resolution, or bit rate of the streamed data. In response to an action by the user through the user interface, a second request (or re-request) is generated to the listing server, or to the hosting server directly, for the initiation of delivery of a new file to the client device. The request carries a time stamp or pointer, such that the new data is streamed starting from a position relative to the approximate point when the user selected a desire to change the quality level. In a preferred embodiment, the pointer corresponds to the time position of the streamed data that is being displayed at the time that the user's re-request is initiated. In one embodiment, the system caches the new streamed data while continuing to play the initial streamed data, so that the transition from the initial streamed data to the new streamed data occurs without restarting the video. In another embodiment, the new streamed data is requested to start a few seconds earlier than the point at which the user re-request was made. When quality has deteriorated, this allows for the rebroadcast of a short segment of the data stream. A user's re-request for a change in quality level can result also in a change of network protocol and of the associated decoder/viewer software. For example, a streaming video that is not displaying well may be better displayed as a slide show file. A slide show file can be encoded using a more efficient different file format, such as the MACROMEDIA FLASH.TM. file format rather than in a streaming video format.

Again, it can be seen that paragraphs 29-31 do not teach “causing: a display of a plurality of quality of service options corresponding to said at least one media file for selection by a remote user” after specifying a media file for transfer, but before the media file is transferred. Rather, Radford teaches a user interface that allows the user of the client device to adjust the quality level of the streamed content while the streamed content is being displayed on the client device.

The Final Office Action further alleges that the third element of the claim, "receiving a quality of service selection specifying at least one of said plurality of quality of service options," is anticipated by Radford in paragraph [0009], lines 1-12; paragraph [0031], lines 9-34. However, this element should be viewed in the context of the entire claim: "receiving an input specifying at least one media file for transfer via a communication channel in the communication network; subsequent to said receiving, causing: a display of a plurality of quality of service options corresponding to said at least one media file for selection by a remote user; and receiving a quality of service selection specifying at least one of said plurality of quality of service options; and subsequent to said receiving of said quality of service selection, transferring said at least one media file via said communication channel utilizing said quality of service selection."

The claim clearly states "receiving a quality of service selection specifying at least one of said plurality of quality of service options" that correspond to the specified media file after specifying the media file for transfer, but before the media file is transferred. Accordingly, the Applicant submits that Radford does not teach the limitations of this element of the claims 1, 11, and 21 when the claims are viewed in entirety.

For example, paragraph 9, lines 1-12 of Radford states:

> [0009] **After display of the initial streamed data content**, a user can adjust the quality level of the content being displayed by re-requesting from the listing server or hosting server or servers, a second streamed data content file having a different quality level from the initial streamed content file. The second streamed data content file corresponds to substantially the same information content as the initially requested data content, but encoded, produced or stored at a different quality level. A user's re-request includes an initiation time pointer corresponding to a position within the initial streamed data file being displayed at the time of said re-request.

It can clearly be seen that paragraph 9 of Radford does not teach "receiving a quality of service selection specifying at least one of said plurality of quality of service options" that correspond to the specified media file after specifying the media file for transfer, but before the media file is transferred. **Radford instead teaches that the user "can adjust the quality level of the content being displayed." That is, Radford teaches that the selected media file is already being transferred without any adjustment to the quality level prior to the transfer.** This is not the same as "receiving a quality of service selection specifying at least one of said plurality of quality of service options" that correspond to the specified media file after specifying the media file for transfer, but before the media file is transferred.

Paragraph [0031], lines 9-34 state:

> [0031] In response to an action by the user through the user interface, a second request (or re-request) is generated to the listing server, or to the hosting server directly, for the initiation of delivery of a new file to the client device. The request carries a time stamp or pointer, such that the new data is streamed starting from a position relative to the

> approximate point when the user selected a desire to change the quality level. In a preferred embodiment, the pointer corresponds to the time position of the streamed data that is being displayed at the time that the user's re-request is initiated. In one embodiment, the system caches the new streamed data while continuing to play the initial streamed data, so that the transition from the initial streamed data to the new streamed data occurs without restarting the video. In another embodiment, the new streamed data is requested to start a few seconds earlier than the point at which the user re-request was made. When quality has deteriorated, this allows for the rebroadcast of a short segment of the data stream. A user's re-request for a change in quality level can result also in a change of network protocol and of the associated decoder/viewer software. For example, a streaming video that is not displaying well may be better displayed as a slide show file. A slide show file can be encoded using a more efficient different file format, such as the MACROMEDIA FLASH.TM. file format rather than in a streaming video format.

Accordingly, Radford teaches in paragraph 31 that the user re-request a file already being displayed, with a time stamp, so that the file can be streamed starting from around the time stamp point with a different quality level. This is not the same as "receiving a quality of service selection specifying at least one of said plurality of quality of service options" that correspond to the specified media file after specifying the media file for transfer, but before the media file is transferred.

The fourth element of each of the claims 1, 11, and 21 should also be viewed in context of the entire respective claim: "receiving an input specifying at least one media file for transfer via a communication channel in the communication network; subsequent to said receiving, causing: a display of a plurality of quality of service options

corresponding to said at least one media file for selection by a remote user; and receiving a quality of service selection specifying at least one of said plurality of quality of service options; and subsequent to said receiving of said quality of service selection, *transferring said at least one media file via said communication channel utilizing said quality of service selection*." Accordingly, it can be seen that the specified file is transferred with the selected quality of service options that correspond to the specified media file, where the quality of service options were selected before the media file transfer started.

The Final Office Action states that Radford anticipates this limitation in paragraph [0009], lines 12-14; and paragraph [0031]. However, the Applicant submits that Radford does not teach this limitation of claim 1, 11, and 21 when each claim is viewed in its entirety. For example, paragraph 9, lines 12-14 states "[a] second data content file is then delivered to the client device from a position determined relative to the time pointer." This is not the same as "transferring said at least one media file via said communication channel utilizing said quality of service selection", where the quality of service options were selected before the media file transfer started .

Paragraph 31 states:

> [0031] The user interface allows a user to adjust the quality level of the streamed data being provided from the hosting server or servers. The interface can indicate only the quality levels available (corresponding to files located on the hosting server or servers) or can

> provide a simple increase/decrease quality functionality. When the streamed data is video data, the interface also can allow the user to specifically adjust the quality level by choosing to change the image size, resolution, or bit rate of the streamed data. In response to an action by the user through the user interface, a second request (or re-request) is generated to the listing server, or to the hosting server directly, for the initiation of delivery of a new file to the client device. The request carries a time stamp or pointer, such that the new data is streamed starting from a position relative to the approximate point when the user selected a desire to change the quality level. In a preferred embodiment, the pointer corresponds to the time position of the streamed data that is being displayed at the time that the user's re-request is initiated. In one embodiment, the system caches the new streamed data while continuing to play the initial streamed data, so that the transition from the initial streamed data to the new streamed data occurs without restarting the video. In another embodiment, the new streamed data is requested to start a few seconds earlier than the point at which the user re-request was made. When quality has deteriorated, this allows for the rebroadcast of a short segment of the data stream. A user's re-request for a change in quality level can result also in a change of network protocol and of the associated decoder/viewer software. For example, a streaming video that is not displaying well may be better displayed as a slide show file. A slide show file can be encoded using a more efficient different file format, such as the MACROMEDIA FLASH.TM. file format rather than in a streaming video format.

This paragraph again teaches adjusting quality levels of a media file that is already being displayed. The media file will then be sent starting from a specified point. This is clearly not the same as "transferring said at least one media file via said communication channel utilizing said quality of service selection," where the quality of service options were selected before the media file transfer started.

Based on at least the foregoing, the Applicant believes the rejection of the claims 1-7, 10-17, 20-27, and 30-31 under 35 U.S.C. § 102(a) as being anticipated by Radford has been overcome and respectfully requests that the rejection be withdrawn.

B. Rejection of Claims 1-5, 7-15, 17-25 and 27-31 under 35 U.S.C. § 102(b) as Anticipated by Nakatsuyama

Claims 1-5, 7-15, 17-25, and 27-31 have been rejected under 35 U.S.C. 102(b) as being anticipated by Nakatsuyama. The Applicant respectfully submits that Nakatsuyama does not disclose all the elements of the independent claims 1, 11, and 21. For example, the Final Office Action states that in regard to claims 1, 11, and 21, Nakatsuyama discloses "causing a display of a plurality of quality of service options corresponding to the at least one media file for selection by a remote user" in figure 2, col. 2, lines 30-32, col. 5, lines 5-67. Final Office Action, page 4. However, Nakatsuyama does not teach the claim element quoted above.

For example, column 2, lines 30-32 of Nakatsuyama states, "means for selectively receiving a desired data from the data storing means according to a request from a terminal unit located in a remote place." This does not teach "causing a display of a plurality of quality of service options corresponding to the at least one media file for selection by a remote user."

Additionally, Nakatsuyama (see col. 5, lines 5-67 and figure 2), does not disclose

"causing a display of a plurality of quality of service options corresponding to the at least one media file for selection by a remote user." For example, in column 5, lines 5-20, Nakatsuyama states that the controller 16, which is a part of the data receiver 10 at the remote site, controls the information to be sent to the data transmitter 20. Nakatsuyama (see col. 5, lines 24-51) further discusses entering information via the display screen 15a (as shown in figure 2). Lines 5-23 also state that various information, including the media file name, and data quality information should be transferred to the server. Lines 24-38 state that the various information should be entered "after start-up of the control program … there will appear on the display screen 15a of the monitor a content name input field 2 for entry of a content name, a quality setting field 3 for setting of the quality of a requested data to be served … a transfer time setting field 4 for setting of the transfer time …, and a genre select field 5 for selection of the genre of the requested data to be served from the data transmitter 20."

It is clear that Nakatsuyama discloses displaying the quality of service options **prior to** the media file name being entered. Accordingly, Nakatsuyama does not disclose "causing a display of a plurality of quality of service options for selection by a remote user" **after** the media file is specified, and therefore, cannot anticipate claim 1 of the present application.

Accordingly, the Applicant respectfully submits that, at least for the reasons presented above, claims 1, 11, and 21 are not anticipated by Nakatsuyama. The Applicant respectfully requests that claims 1, 11, and 21 be allowed. Additionally, since the claims 2-5 and 7-10, 12-15 and 17-20, and 22-25 and 27-31 are dependent on the claims 1, 11, and 21, respectively, the Applicant respectfully requests that these claims also be allowed.

Based on at least the foregoing, the Applicant believes the rejection of the claims 1-5, 7-15, 17-25, and 27-31 under 35 U.S.C. § 102(b) has been overcome and respectfully requests that the rejection be withdrawn.

III. CLAIM REJECTIONS UNDER 35 U.S.C. § 103(A)

With regard to an obviousness rejection, MPEP 2142 states that in order for a prima facie case of obviousness to be established, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. Further, MPEP 2143.01 states that “the mere fact that references can be combined or modified does not render

the resultant combination obvious unless the prior art suggests the desirability of the combination," and that "although a prior art device 'may be capable of being modified to run the way the apparatus is claimed, there must be a suggestion or motivation in the reference to do so'" (citing In re Mills, 916 F.2d 680, 16 USPQ 2d 1430 (Fed. Cir. 1990)). Moreover, MPEP 2143.01 also states that the level of ordinary skill in the art cannot be relied upon to provide the suggestion…," citing Al-Site Corp. v. VSI Int'l Inc., 174 F.3d 1308, 50 USPQ 2d 1161 (Fed. Cir. 1999).

With regard to an obviousness rejection, MPEP 2142 states that in order for a prima facie case of obviousness to be established, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. Further, MPEP 2143.01 states that "the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art suggests the desirability of the combination," and that "although a prior art device 'may be capable of being modified to run the way the apparatus is claimed, there must be a suggestion or motivation in the reference to do so'" (citing In re Mills, 916 F.2d 680, 16 USPQ 2d 1430 (Fed. Cir. 1990)). Moreover,

MPEP 2143.01 also states that the level of ordinary skill in the art cannot be relied upon to provide the suggestion…," citing Al-Site Corp. v. VSI Int'l Inc., 174 F.3d 1308, 50 USPQ 2d 1161 (Fed. Cir. 1999).

A. Rejection of Claims 6, 16, and 26 under 35 U.S.C. § 103(a)

Claims 6, 16, and 26 have been rejected under 35 U.S.C § 103(a) as being unpatentable over Nakatsuyama. Claims 6, 16, and 26 depend on claims 1, 11, and 21, respectively. As shown above, Nakatsuyama does not disclose all elements of the claims 1, 11, and 21. Since the claims 6, 16, and 26 are dependent on the claims 1, 11, and 21, the Applicant respectfully submits that these claims be allowed.

Based on at least the foregoing, the Applicant believes the rejection of the claims 6, 16, and 26 under 35 U.S.C. § 103(a) over Nakatsuyama has been overcome and respectfully requests that the rejection be withdrawn.

B. Rejection of Claims 8-9, 18-19, and 28-29 under 35 U.S.C. § 103(a)

Claims 8-9, 18-19, and 28-29 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Radford in view of Nakatsuyama. The claims 8-9, 18-19, and 28-29 depend on the claims 1, 11, and 21, respectively. As shown above, Nakatsuyama does not disclose all elements of the claims 1, 11, and 21, and Radford does not anticipate the claims 1, 11, and 21. Since the claims 8-9, 18-19, and 28-29

are dependent on the claims 1, 11, and 21, the Applicant respectfully submits that these claims be allowed.

CONCLUSION

Based on at least the foregoing, Applicant believes that all pending claims 1-31 are in condition for allowance. If the Examiner disagrees, the Applicant respectfully requests a phone interview, and requests that the Examiner telephone the undersigned at 312-775-8000.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

Date: 31-JAN-2011

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